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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

LEON HONG LIN,

Respondent,

v.

JENNY PEI LIN,

Appellant.

A154462, A154991

(Alameda County
Super. Ct. No. AF11569953)

Jenny Pei Lin appeals from an order and judgment entered in dissolution proceedings with her former husband, Leon Hong Lin. The sole issue on appeal is the trial court's characterization of real estate in Pleasanton that the parties purchased during their marriage. The court found that the property was a community asset and ordered Jenny to remove liens that had been placed on the property to secure loans she obtained after the couple separated.¹ We affirm.

I.
FACTUAL AND PROCEDURAL
BACKGROUND

Jenny and Leon were married in August 2001, and they separated in February 2009. The Pleasanton property was purchased during the marriage in 2002, and the parties stipulated that it "is held by Leon Lin and Pei Jin Lin, Husband and Wife as

¹ As is customary, we will refer to the parties by their first names since they share the same surname.

Community Property with right of survivorship.” After the parties separated, three liens were placed on the property to secure loans that Jenny had taken out in an amount totaling \$3.98 million. In December 2012, the parties negotiated a proposed agreement (the 2012 agreement), which they later supplemented, that would have divided the property.

In the trial court, Jenny argued that the property should be characterized as her separate property, because she allegedly used her own money to pay for it and because of the 2012 agreement. After a four-day court trial that spanned over six months, the court rejected Jenny’s argument and ruled that the property was a community asset. It found Jenny had “failed to meet her burden to trace any of her separate property to the purchase of the . . . property” and that the property’s community characterization was not affected by the 2012 agreement since the parties failed to perform their obligations under it.

After declaring the property a community asset, the trial court ordered Jenny to remove the liens that had been placed on the property. The court found that there was “no evidence that Leon gave his written consent for the encumbrances on the property” and that Jenny had “breached her fiduciary duty” by allowing the liens to secure her loans without Leon’s consent.

The trial court issued its final decision on April 30, 2018, and Jenny appealed from it in Case No. A154462. The court issued a final judgment of dissolution on June 6, 2018, and Jenny appealed from it in Case No. A154991. We consolidated the appeals.²

II. DISCUSSION

A. *The Standard of Review.*

We presume the correctness of the trial court’s orders and indulge all intendments and presumptions to support them on matters as to which the record is silent. (*Denham v.*

² In light of this consolidation, and because both appeals challenge only the trial court’s characterization of the Pleasanton property, we need not resolve the parties’ dispute as to the separate appealability of the April 30 order.

Superior Court (1970) 2 Cal.3d 557, 564.) The party appealing from an order has the burden to affirmatively show error. (*Id.* at p. 566.)

“Whether the spouse claiming a separate property interest has adequately met his or her burden of tracing to a separate property source is a question of fact and the trial court’s holding on the matter must be upheld if supported by substantial evidence.” (*In re Marriage of Cochran* (2001) 87 Cal.App.4th 1050, 1057-1058; see also *In re Marriage of Dekker* (1993) 17 Cal.App.4th 842, 849 [“Appellate review of a trial court’s finding that a particular item is separate or community property is limited to a determination of whether any substantial evidence supports the finding.”].) To the extent the parties argue “pure questions of law, such as procedural matters or interpretations of rules or statutes, we exercise our independent judgment.” (*Gordon’s Cabinet Shop v. State Comp. Ins. Fund* (1999) 74 Cal.App.4th 33, 38.)

B. Jenny Forfeited Her Argument Regarding the Admissibility of a Declaration Marked as Exhibit A.

We begin by rejecting Jenny’s claim that the trial court improperly denied admitting into evidence a document she refers to as a “Declaration of Promises.”³

When Jenny testified, she was shown Exhibit A. The document, which is dated several months before the parties purchased the Pleasanton property, purports to declare that all jointly titled property will belong to Jenny in the event of a divorce. Jenny testified that Leon signed the document in her presence. When Jenny’s attorney moved to admit the document into evidence, Leon’s attorney objected. The court expressed a concern that Jenny’s testimony about Leon’s signature was “just [Jenny’s] word,” and it pointed out that Leon had not admitted to signing the document. Accordingly, it sustained the objection on the grounds of “[l]ack of foundation and lack of authentication of the document.” Jenny’s attorney questioned the ruling, but he stated he would call

³ An apparent copy of this document, entitled “Letter of Promise,” is included in our record as an attachment to a request for reconsideration Jenny filed in the trial court after she filed her first notice of appeal.

Leon back as a witness to “prove that this is his signature.” In the continued proceedings about a month later, however, the attorney stated he “would not be calling” Leon back as a witness after all. Near the end of the trial, the court and parties reexamined trial exhibits to review whether they had been admitted, needed to be ruled on, or had been withdrawn. During this colloquy, Jenny’s attorney declared he was “not seeking admission” of Exhibit A.

By not seeking admission of Exhibit A, Jenny’s attorney forfeited any appellate claim of evidentiary error. (Evid. Code, § 353; *People v. Partida* (2005) 37 Cal.4th 428, 433-434.) We recognize that an attorney does not forfeit an objection by merely accepting an adverse ruling by the trial court. (See *Park City Services, Inc. v. Ford Motor Co., Inc.* (2006) 144 Cal.App.4th 295, 311 [“ ‘ “ ‘An attorney who submits to the authority of an erroneous, adverse ruling after making appropriate objections or motions, does not waive the error in the ruling by proceeding in accordance therewith and endeavoring to make the best of a bad situation for which [the attorney] was not responsible.’ ” ’ ”].) But here, Jenny’s attorney did more than just proceed in accordance with the court’s original ruling sustaining the objection; he affirmatively withdrew his request to admit the document. Under these circumstances, we have little trouble concluding that any evidentiary error by the trial court was forfeited for purposes of appellate review.

C. We Decline to Reweigh Evidence or to Consider New Evidence.

In her opening brief, Jenny asks us to consider new evidence and to reweigh evidence that was presented to the trial court. We decline to do either.

We first reject her request for us to consider new evidence. This new evidence includes tracing evidence that allegedly “demonstrates that [Jenny’s] separate funds paid for the [Pleasanton] property,” “expert reviewed handwriting comparison evidence further authenticating the Declaration of Promise,” and evidence purporting to show that Leon has “unclean hands” by allegedly embezzling money from Jenny and her family.

“ ‘[A]n appeal reviews the correctness of a judgment as of the time of its rendition, upon a record of matters which were before the trial court for its consideration.’ ”

[Citation.] This rule reflects an ‘essential distinction between the trial and the appellate court . . . that it is the province of the trial court to decide questions of fact and of the appellate court to decide questions of law. . . .’ [Citation.] The rule promotes the orderly settling of factual questions and disputes in the trial court, provides a meaningful record for review, and serves to avoid prolonged delays on appeal. ‘Although appellate courts are authorized to make findings of fact on appeal by Code of Civil Procedure section 909 and [California Rules of Court, rule 8.252], the authority should be exercised sparingly. [Citation.] Absent exceptional circumstances, no such findings should be made.’ ” (*In re Zeth S.* (2003) 31 Cal.4th 396, 405, italics omitted.)

Jenny presents no such exceptional circumstances warranting our consideration of her proffered new evidence. She claims neither that this evidence was unavailable to her nor that she was prevented from presenting it during the trial court proceedings. (See *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, fn. 3 [request for a factual determination under Code of Civil Procedure section 909 to add documents not before the trial court to rebut factual claims did not constitute exceptional circumstances]; *In re Josiah Z.* (2005) 36 Cal.4th 664, 676 [“an appellate court should not consider postjudgment evidence going to the merits of an appeal and introduced for the purposes of attacking the trial court’s judgment”].) Her request essentially asks us simply to “revisit what are essentially substantive evidence issues with new evidence and make new factual determinations—a task that is better suited for the trial court than for an appellate court.” (*In re Valerie W.* (2008) 162 Cal.App.4th 1, 9.) Because Jenny’s arguments that the court erred in finding she “failed to meet her burden to trace any of her separate property to the purchase of the . . . property” and that Leon has “unclean hands” are based on this new evidence, we reject them.

We also reject Jenny’s request for us to reconsider or reweigh evidence that *was* presented to the trial court. This evidence includes the declaration of promise, Exhibit A, for which we have already rejected Jenny’s claim of error. It also includes a restraining order that Jenny claims shows Leon “had constructive notice of the [post-marriage] liens.” The characterization of the Pleasanton property is not controlled by Leon’s actual

or constructive notice of the liens, but even if it were we would decline to reweigh the evidence presented on the issue. “Where findings of fact are challenged on a civil appeal, we are bound by the ‘elementary, but often overlooked principle of law, that . . . the power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted,’ to support the findings below. [Citation.] We must therefore view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor in accordance with the standard of review so long adhered to by this court.” (*Jessup Farms v. Baldwin* (1983) 33 Cal.3d 639, 660.)

Here, even if Leon’s awareness of the liens was pivotal, the record reflects plenty of evidence supporting the trial court’s finding that Leon was unaware of them. The court pointed out that Leon testified “he was not aware of the loans or the liens,” and it found this “testimony credible.” At the same time, the court “did not find Jenny to be a credible witness, overall, given her inconsistent account of the liens and whether any of the monies borrowed were repaid or whether any of the liens were ever removed.” Viewing the evidence in the light most favorable to Leon, we must accept the court’s finding.

D. Substantial Evidence Supports the Trial Court’s Ruling that the Property Was a Community Asset.

We next consider whether the trial court’s characterization of the Pleasanton property as a community asset was supported by substantial evidence, and we conclude it was. In applying the substantial-evidence test, “we review the evidence in the light most favorable to the [prevailing party] and presume in support of the judgment the existence of every fact the [trier of fact] could reasonably have deduced from the evidence. [Citation.] ‘Conflicts [in evidence,] and even testimony [that] is subject to justifiable suspicion, do not justify the reversal of a judgment, for it is exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends.’ ” (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.) “ “ ‘If the circumstances reasonably justify the trier of fact’s findings, the opinion

of the reviewing court that the circumstances might also be reasonably reconciled with a contrary finding does not warrant a reversal of the judgment.’ ” ’ ” (In re George T. (2004) 33 Cal.4th 620, 631.)

The record reflects ample, and certainly substantial, evidence that the Pleasanton property was a community asset. To begin with, the parties stipulated that the property was purchased during the marriage and “is held by Leon Lin and Pei Jin Lin, Husband and Wife as Community Property with right of survivorship.” In addition, Leon testified that the property was purchased with “our money,” referring to his and Jenny’s money, and that the purchase money included funds from a “joint company [in China in the amount of] \$300,000.” And both parties seemingly considered the property to be a community asset after they separated or they would not have negotiated the 2012 agreement to divide it. Finally, Leon testified that he and Jenny had not come to any other “agreement about how this property should be held.”

Jenny argues that the trial court’s characterization of the property cannot stand because, according to her, the court wrongly found that the 2012 agreement was not controlling. We are not persuaded. The trial court found that “[u]ltimately, [however,] the parties did not follow through with the terms stated in the [2012 agreement].” The court recounted, “Jenny testified that [under the agreement] Leon was supposed to have ‘available’ \$400,000 to be held in escrow by March 20, 2013.[] Jenny stated that Leon did not deposit these funds on time, and therefore, he breached their [agreement]. Leon, on the other hand, testified that he was not in breach because the [agreement] required Jenny to first remove the outstanding liens from the [Pleasanton] property to allow him to acquire a buyer. Because Jenny did not remove the liens, his obligation was not triggered.” We perceive no error with the court’s ruling that the 2012 agreement did not alter the characterization of the property in light of the facts establishing that the parties failed to follow through on the agreement. (See *J.B.B. Investment Partners, Ltd. v. Fair* (2014) 232 Cal.App.4th 974, 984 [whether parties had a meeting of the minds regarding a settlement is a factual question that will not be disturbed if supported by substantial evidence].)

E. Jenny Forfeited Her Argument that Her Brother Is an Indispensable Party.

Finally, Jenny argues that her brother, Jason Guan, is a real party in interest in this case, and she argues that the trial court's orders interfere with his interests. At oral argument, her counsel conceded that this argument had not been made in the trial court, and we have been provided with no citations to the record suggesting otherwise. The argument was therefore forfeited. (See *Keener v. Jeld-Wen, Inc.* (2009) 46 Cal.4th 247, 264 [forfeiture rule applies in all criminal and civil proceedings].)

III.

DISPOSITION

The April 30, 2018 order and June 6, 2018 judgment are affirmed.

Humes, P.J.

We concur:

Margulies, J.

Sanchez, J.

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